

If Group II is chosen, the Examiner has required the Applicants elect specific values of "R" and R¹. Applicants provisionally elect Group I.

Applicants respectfully traverse the restriction requirement. The Examiner alleges that inventions of Groups I and II of the instant Office Action are distinct from each other because they are drawn to structurally dissimilar compounds and they are made and used independently.

Proper restriction between independent and distinct inventions claimed in the same application requires that (1) the invention must be independent and distinct as claimed and (2) there must be a serious burden placed on the Examiner by not requiring restriction. If either criteria is not met, restriction is not proper.

With respect to the term "independent", "independent" means that there is no disclosed relationship between the two or more subjects disclosed in a patent application. M.P.E.P. §802.01. The instant application is directed to a pyrazolinones that are kinase inhibitors and methods of using them. Thus, the common thread linking these compounds is twofold, first they all share a pyrazolinone core structure and, second, they inhibit one or more kinases. Therefore, the subjects of the instant application are not "independent" as determined by M.P.E.P. 802.01.

The term "distinct", as defined in M.P.E.P. § 802.01, means two or more subjects as disclosed are capable of separate manufacture, use or sale as claimed, and are patentable over each other. The compounds of the invention are related by the common core pyrazolinone structure as well as their common utility as kinase inhibitors. The compounds represent different embodiments of one invention. Thus, the subjects disclosed in the instant application do not meet the criteria for "distinct" as defined in M.P.E.P. § 802.01.

Thus, the subjects disclosed in the instant application do not meet the criteria for "distinct" as defined in M.P.E.P. § 802.01.

Thus, Applicants respectfully submit that the instant invention does not meet the threshold of "two or more independent and distinct" inventions as required in 35 U.S.C. §121 and as such the restriction requirement is improper.

With respect to the burden of the examination, M.P.E.P. §803 states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent and distinct inventions.

The instant application contains two searchable, unifying aspects, i.e. inhibition of kinase activity and a common core structure, which link all of the species. The compounds disclosed in the instant application represent different embodiments of a single inventive concept for which a single patent should issue. These species represent an intricate web of knowledge, continuity of effort, and consequences of a single invention, which merit examination in a single application. Applicants submit that the Examiner can search and examine the application without serious burden.

Based upon the foregoing, the restriction requirement should be withdrawn and all of the subject matter of claims 18, 23-28, 30-38, 41 and 45-47 should be prosecuted together. Prompt and favorable action is earnestly solicited.

Respectfully submitted,

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